



INFORMATION ABOUT SECTION 21 OF THE *MARINE PARKS ACT 2007* AND THE *MARINE PARKS (STATUTORY AUTHORISATION COMPENSATION) REGULATIONS 2015*

What is included in the *Marine Parks (Statutory Authorisation Compensation) Regulations 2015*?

The Regulations:

- describe the process for making compensation applications;
- provide that the Minister may establish advisory panels to provide him/her with advice on fair and reasonable compensation;
- describe the requirements for the Minister to notify compensation applicants about the outcome of their applications;
- provide the process for compulsory acquisition of an authorisation or interest (or part of any interest) under the authorisation;
- establish a process for review by the Minister of his/her determination on the payment of compensation and, if the applicant remains dissatisfied following that review, a right of appeal to the Environment, Resources and Development Court; and
- provide transition provisions for applications received before the finalisation of the Regulations.

What is a statutory authorisation?

- The *Marine Parks Act 2007* (section 3) defines a statutory authorisation as an, "*approval, consent, licence, permit or other authorisation or entitlement granted, arising or required under an Act.*"

What is a marine park zone?

- A marine park zone is an area within a marine park that has boundaries defined by the management plan for that park and is identified by the management plan as a particular type of zone.
- By regulation, activities may be prohibited or restricted within a zone of a marine park.
- For example, the *Marine Parks (Zoning) Regulations 2012* apply various prohibitions and restrictions to the different types of zones.
- The *Marine Parks (Zoning) Regulations 2012* recognise that the rights conferred by an existing fishery authorisation were subject to a prohibition or restriction that applied to a zone in a marine park.

What is a temporary prohibition or restriction?

- Section 18 of the *Marine Parks Act* provides that the Minister may issue a temporary prohibition or restriction notice for a maximum period of 90 days to:
 - protect a species of plant or animal,
 - protect a feature of natural or cultural heritage, or
 - protect public safety.

These notices may be renewed for up to an additional 90 day period.

- For example, notices have been issued in Encounter Marine Park to protect public safety around the accidentally marooned Oceanlinx wave convertor and to restrict public access at the dredging operations at the River Murray mouth. A notice was also issued in Upper Gulf St Vincent Marine Park to restrict public access to seven stranded sperm whale carcasses.

APPLYING FOR COMPENSATION UNDER SECTION 21 OF THE MARINE PARKS ACT 2007 AND THE MARINE PARKS (STATUTORY AUTHORISATION COMPENSATION) REGULATIONS 2015

Can I apply for compensation?

- A holder of a statutory authorisation who believes a right granted by the authorisation has been affected by the establishment of a marine park zone or a temporary prohibition or restriction of activities within a marine park may apply for compensation.

How would I apply for compensation?

- Applications must be made in writing to the Department of Environment, Water and Natural Resources, acting administratively on behalf of the Minister. An application must:
 - include your contact details – residential/registered address, fax number or email;
 - identify your statutory authorisation;
 - identify the relevant zone(s) or temporary prohibition or restriction to which the application relates;
 - include details of how, and the extent to which, the rights granted by your authorisation have been affected;
 - specify the amount of compensation claimed;
 - include details of a bank or similar account (ADI – authorised deposit taking institution) into which any payment of compensation can be made; and
 - include supporting evidence to justify the amount claimed.
- The Minister may, by written notice, request that further information, documents or records be provided for the purpose of determining the application.
- The Minister may pay compensation in respect of affected rights or compulsory acquisition whether or not an application has been received.

How would my compensation application be assessed?

- The applications would be assessed by considering the effect of the zone or temporary prohibition or restriction on the rights granted by the statutory authorisation.
- The Minister would consider if it is appropriate to compulsorily acquire the statutory authorisation or any interest (or part of any interest) under the authorisation.
- The fair and reasonable compensation of the affected rights or compulsory acquisition (as the case may require) would also be considered.
- All applications for compensation would be considered on a case-by-case basis.

Would my authority be compulsorily acquired?

- Section 21 of the Marine Parks Act provides that the Minister is to compulsorily acquire the statutory authorisation, or any interest (or part of any interest) under the authorisation, if he/she considers it appropriate to do so.
- The Regulations, therefore, provide a process so that the Minister may respond to a compensation application by compulsorily acquiring the statutory authorisation or interest.
- If compulsory acquisition is to occur, the Regulations provide that the Minister must provide notice of this determination (Regulation 5(5)). A further notice of acquisition is to be provided together with details of the Minister's determination of compensation and the date on which the acquisition will take effect (Regulation 8).
- The Regulations provide that a statutory authorisation holder must not enter into any transaction in relation to the authority without disclosing the receipt of a compulsory acquisition notice.

Who would be on the advisory panel that may provide advice to the Minister about applications?

- The Regulations provide that the Minister may receive advice from an advisory panel in relation to the amount of compensation.
- An advisory panel includes three members appointed by the Minister, with extensive knowledge and experience in:
 - law or public administration;
 - financial matters, economics or asset evaluation; and
 - the industry in which holders of relevant statutory authorisations are participants.

What if I am not satisfied with the determination of my application?

- The Regulations set out a process for review and appeal of the Minister's determination in relation to the payment of compensation.
- If the authorisation holder is not satisfied with the Minister's determination in relation to the payment of compensation, he/she may apply within 21 days of receiving notice of the determination (under Regulation 8) to the Minister for a review, providing details of the grounds on which the review is sought.
- On a review, the Minister's determination may be affirmed, varied or reversed.
- If the authorisation holder remains dissatisfied with the determination following the review, he/she may appeal to the Environment, Resources and Development Court. The appeal must be made within 21 days of receipt of the notice of the review decision.

What has the Government done to minimise the impact of marine parks on commercial fishing?

In 2011, the Displaced Commercial Fishing Policy Framework was released to provide information about the Government's position on displacement of commercial fishers as a result of implementing marine parks. This Framework outlines four sequential steps for managing any displacement of commercial fishing arising from marine parks, especially the establishment of zoning, as follows:

1. Avoid displacement by pragmatic zoning;
2. Redistribute effort where practicable;
3. Voluntary market-based buy-back of sufficient effort to ensure on-going sustainability of the fishery and mitigate the potential for environmental or economic effects of redistributing fishing effort to fishing areas outside sanctuary zones (i.e. to reach an effort reduction target); and
4. Compulsory acquisition, if required to meet the effort reduction target.

To help fulfil step 1, the Government made an extensive effort to minimise any negative impacts on commercial fishing from implementing marine parks. Relevant Government agencies, Marine Park Local Advisory Groups and the commercial fishing industry helped the Government to design marine park zones which avoid, as much as possible, high catch and high value fishing areas.

However, even with these efforts, some displacement of commercial fishing effort was inevitable. Where this fishing effort could not be redistributed within a fishery without impacting on its economic or ecological sustainability, this effort (effort reduction target) was removed from fisheries through the SA Marine Parks: Commercial Fishing Catch/Effort Reduction Program. This Program identified acquisition targets for the six fisheries affected by marine park zoning and the targets were voluntarily reached for all six fisheries.

Despite these efforts, some holders of remaining statutory authorisations may believe their granted rights are affected, and they may apply for compensation.